Supreme Court, U. S.
FILED
APR 14 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1299

FOUR WINDS, INC., *Petitioner.*

vs.

INDIANA AERONAUTICS COMMISSION, *Respondent.*

SUPPLEMENTAL APPENDIX

STEVEN H. FRANK
MAGNUSON, DEIN & HAMMES
One Indiana Square
Suite 1650
Indianapolis, IN 46204
Telephone: (317) 634-8103

Counsel of Record for Petitioner.

TABLE OF CONTENTS
SUPPLEMENTAL APPENDIX

	Page
Complaint for Injunction	1b
Plaintiff's Argument	6b
Plaintiff, Four Winds, Inc. Post-Hearing Brief	9b
Findings of Fact	16b
Conclusions of Law	27b
Order	30B
Amended Findings of Fact	32b
Amended Conclusions of Law	42b

STATE OF INDIANA)	IN THE MARION COUNTY
)SS:	
COUNTY OF MARION)	SUPERIOR COURT 5
	CAUSE NO. S 576-233
FOUR WINDS, INC.,	)
Plaintiff,	)
vs.	)
INDIANA AERONAUTICS COMMISSION,	)
Defendants.	)

COMPLAINT FOR INJUNCTION

Comes now the Plaintiff, Four Winds, Inc., an Indiana corporation, in person and by counsel, and does hereby file its verified Complaint For Injunction in the words and figures as follows:

1. That Plaintiff is an Indiana Not-for- Profit Corporation, organized and operating a private airplane travel club in the State of Indiana, and more specifically from Weir Cook Airport, Indianapolis, Indiana.

2. That said Plaintiff is the owner of one 1962 Convair airplane Model 880-22M, which is based and operated out of Weir Cook Airport, Indianapolis,

Indiana.

3. That the Indiana General Assembly, during 1975, enacted Public Law No. 68, which requires the Aeronautic Commission of the State of Indiana to register and collect an excise tax on all aircraft based in the State of Indiana for 180 days per year or more, beginning with January 1, 1976.

4. That said Convair 880, above described, was acquired by the Plaintiff in this action during the Fall of 1975, for the approximate price of Two Hundred and Twenty-Five Thousand Dollars ($225,000.00).

5. That under the classification of said excise tax, as published in Public Law 68 in the 1975 General Assembly, said aircraft is presently subject to payment of the excise tax on or before February 29, 1976, in the approximate amount of Eighteen Thousand and Six Hundred Dollars ($18,600.00).

6. That comparative to other aircraft, with a much greater value, but a lesser weight, the excise tax payment due

on those other planes would be substantially less than that due on the plane owned by Plaintiffs in this action, and further would have no relevancy whatsoever to the stated value, not the number of flights made, nor the use of landing strips at various airports in the State of Indiana.

7. That Sections 12 and 13 of said Public Law 68, as enacted by the 1975 General Assembly, are unconstitutional as being in violation of the Fourteenth Amendment of the Constitution of the United States, in that it effectively deprives the Plaintiff in this action of property without due process of law, and further that it denies the Plaintiff in this action equal protection of the laws, and more specifically the taxation under said laws.

8. And, that Plaintiff further alleges that said Section 12 and 13 of Public Law 68, as enacted by the 1975 General Assembly, is unconstitutional under provisions of the Constitution of the State of Indiana, and further under

the Constitution of the United States of America, by virtue that said excise tax as it applies to this Plaintiff would be an arbitrary and capricious application, and an unjust taking of property without any solid basis or foundation upon which said tax was enacted to be fair and equitable to all parties subject to said tax.

WHEREFORE, Plaintiff does hereby pray that a temporary restraining order be issued by this Court against the Aeronautics Commission of the State of Indiana, from enforcing said excise tax at this time, and further be restrained from disallowing said Plaintiff to operate its airplane without said registration statement as secured by the payment of said excise tax due February 29, 1976, in the approximate amount of Eighteen Thousand and Six Hundred Dollars ($18,600.00), and further that said Sections 12 and 13 of said Public Law 68, as enacted by the 1975 General Assembly, be declared unconstitutional and in violation of those guaranteed

rights as above specified to this Plaintiff, and for all other relief proper in the premises.

/s/ Glenn Jones
Four Winds, Inc.

STATE OF INDIANA)
SS:
COUNTY OF MARION)

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 27th day of February, 1976.

/s/ Becky Ann Richter
Notary Public

My Commission Expires:

January 30, 1980

James P. Quinn
Buck, Berry, Landau, Breunig & Quinn
One Indiana Square, Suite 2235
Indianapolis, Indiana 46204
639-2683

Henry Y. Dein
Magnuson, Dein & Hammes
One Indiana Square, Suite 1650
Indianapolis, Indiana 46204
634-8103

STATE OF INDIANA) IN THE MARION COUNTY
) SS:
COUNTY OF MARION) SUPERIOR COURT No.5

FOUR WINDS, INC. and AMBASSADAIR, INC.,

Plaintiffs,

vs.

INDIANA AERONAUTICS COMMISSION,

Defendant.

PLAINTIFF'S ARGUMENT

MR. DEIN: We simply feel that the evidence clearly indicates that the tax imposed on these two (2) Plaintiffs works a confiscation of their property because it fails to take into consideration the real attributes of value as applied to aircraft. Those real attributes of value are basically the equipment of the aircraft, the electronics on the aircraft, some reasonable appraisal method by which aircraft could be valued. We felt that the law does not take into consideration the fact that we're dealing here with very sophisticated equipment and that having failed to set up any reasonable proceedure for the assessment of any actual value figure, that the law is therefore arbitrary and capricious. And we think, as applied to these particular Plaintiffs, that they were left out of the exemption provisions of the law by a Legislative error. It's quite clear that this is true, as the witness truthfully, I think, testified. They realized their error after the initial legislation was passed. Went back to the Legislature

and attempted to have the situation corrected, and were unsuccessful. And, the law, as written, does not give the Indiana Aeronautics Commission any discretion in adjusting these inequities, and therefore the proper recourse for these two (2) petitioners is to have the law declared unconstitutional as it applies to them. And to properly restrain or enjoin the Indiana Aeronautics Commission from, in effect, depriving these two (2) petitioners of their property without due process of law. And denying them equal protection of the law.

STATE OF INDIANA) SS: IN THE MARION COUNTY
COUNTY OF MARION) SUPERIOR COURT 5
CAUSE NO. S 576-233

FOUR WINDS, INC. and AMBASSADAIR, INC.,
Plaintiffs,
vs.
INDIANA AERONAUTICS COMMISSION,
Defendant.

PLAINTIFF, FOUR WINDS, INC. POST-HEARING BRIEF

The Aircraft Excise Tax imposed by Public Law 68 passed in the 1975 General Assembly of the State of Indiana is an invidious discrimination as applied to Four Winds, Inc., Petitioner, herein.

The tax is predominately to provide funds for construction and improvement of air transport facilities in the State of Indiana, by providing funds to various counties, taxed against aircraft based

therein.

The use of the facilities in Marion County, Indiana, so provided is: Weir Cook Airport, is utilized 99.44% by companies whose aircraft are specifically exempt from taxation under this act. No commercial carrier will be taxed under this Act based on exclusionary exemption. Petitioner herein has one of possibly five (5) commercial type aircraft in Indiana that are taxed however under this Act. This tax imposed will be sufficient to fully exhaust the value of the Petitioner's aircraft in twelve (12) years with no allowance for depreciation being used in the computation with an aircraft expected life of twenty-five (25) years. This amounts to a confiscation of the aircraft.

The director of the Indiana Aeronautics Commission has openly admitted, under oath, in this proceeding, that this tax was in fact conficatory, further that it was a legislative omission or error that this Petitioner was not also exempted as were similar aircraft carriers

and that this tax unfairly and invidiously discriminates against this Petitioner.

The director of the Indiana Aeronautics Commission further testified that there were between five and ten thousand aircraft in Indiana paying a total tax of approximately Five Hundred Thousand Dollars ($500,000.00) per year, and that approximately five (5) non-exempt carriers would have to pay approximately One Hundred Thousand Dollars ($100,000.00) of this total tax collected, or approximately twenty percent (20%) therein. This, he further testified was a mistake and inherently unfair.

The Court's have consistently held that excise taxes that invidiously discriminate will not be permitted. The tax in this matter is applied to the Petitioner herein, does exactly that; as testified by the very agency charged with its enforcement.

The application of an excise tax based entirely on weight is invidious discrimination as applied to these Petitioners, because such a method ig-

nores the real values of the property tax and fails to consider the actual extent of the exercise of the privilege conferred. *Gaffil v. Bracken* (1942) 145 N.E. 312, 195 Ind. 551.

Petitioner would further argue that with the enactment of the excise tax under Public Law No. 68 that it more than doubles, in fact, the personal property tax that Petitioner's would have paid under previously established laws, held to be equitable, fair, and not a penalty, by previous judicial review. And, further, that many aircraft owners under this act are given the option to stay with the assessed value and pay a property tax on the basis of the plane, rather than pay an excise tax which might be higher. This alternative is not given to the Petitioner herein.

Petitioner further argues that this excise tax is in violation of the Fourteenth Amendment of the Constitution of the United States in that it effectively deprives them of their property in a confiscatory manner without due process of

law, and further it does not give them equal protection of the laws as compared with other individuals subject to this tax, whom are either excluded or exempted, or given alternative method of taxation as written in the tax law due to the manipulative law being at the time that this law was passed by the General Assembly and further in contravention of the Petitioner's Constitutional Rights in that planes with a much greater value are taxed a substantially lower rate.

Previous to the enactment of this Public Law 68 by the 1975 General Assembly, taxation of Petitioner's aircraft would have been in accordance with Article 10 Section 1, of the Constitution of the State of Indiana, however, by the mere titling this legislative enactment as a "excise tax", the State is circumvented by mere mirage the constitutional requirement of that above noted section of the Indiana Constitution that there shall be a just evaluation for taxation of all property, both real and personal. This is nothing more than a mere scheme

by special interest groups to shift the base of the tax burden away from themselves to individuals, such as the Petitioner herein.

CONCLUSION

Public Law No. 68 as enacted by the 1975 General Assembly is unconstitutional as it applies to this Petitioner; is in violation of the Fourteenth Amendment and further that it is an invidious discrimination as applied to this Petitioner.

Respectfully submitted,

/s/ James P. Quinn
Attorney for the
Plaintiff, Four Winds,
Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon William E. Daily, Assistant Attorney General, Room 219 State Capitol Building, Indianapolis, Indiana 46204, this 5th day of

April, 1976, and upon Edgar H. Lamb, 3170 Indiana National Bank Tower, Indianapolis, Indiana.

/s/ James P. Quinn

James P. Quinn
One Indiana Square, Suite 2235
Indianapolis, Indiana 46204
639-2683

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

IN THE MARION COUNTY
SUPERIOR COURT 5

CAUSE NO. S576-233

FOUR WINDS, INC. and AMBASSADAIR, INC.,

Plaintiffs,

vs.

INDIANA AERONAUTICS COMMISSION,

Defendant.

FINDINGS OF FACT

1. Four Winds, Inc., is an Indiana Not-for-Profit Corporation, organized under the Indiana Not-for-Profit Corporation Law, in approximately July of 1975.

2. Further, that Four Winds, Inc., is an air travel club that is based in the Indianapolis area, and operates specifically as a club only to its members.

3. That Four Winds, Inc., operates

from Combs Gates hangar at Weir Cook Airport, Indianapolis, Indiana.

4. That even though the Convair 880 operated by Four Winds, Inc., is based at Combs Gates hangar, the aircraft is still out of the State of Indiana, approximately four (4) days of each week of the year.

5. That Four Winds, Inc., operates under a FAA Certificate under Part 123. And, further that all of its operations, as far as crews, aircraft, maintenance, etc. are controlled by the FAA.

6. That the Convair 880, owned by Four Winds, Inc., was built in 1962.

7. That the value of the 1962 model Convair 880 is approximately Two Hundred and Twenty-Five Thousand Dollars ($225,000.00), which in fact was the price paid on the lease with option to purchase agreement.

8. That under the provisions of Public Law 68 that were passed by the 1975 General Assembly, Four Winds, Inc., would be required to pay approximately Eighteen Thousand Six Hundred

Dollars ($18,600.00) in excise taxes to the Indiana Aeronautics Commission for certification by the State and registration by the State, of said plane for operation during 1976 calendar year.

9. Further, that this tax is based on a maximum landing weight of one hundred and fifty-five thousand pounds (155,000 lbs) at a twelve cents ($.12) per pound charge under the excise tax provisions of the above described law during the year of 1976.

10. That under a normal personal property tax assessment that has been previously existing in the State of Indiana, for purposes of taxation, the tax on this Convair 880, 1962 Model, would have been for 1976 due and payable in 1977, approximately Seven Thousand Two Hundred Dollars ($7,200.00).

11. That comparatively, a Lear Jet that would have value of, from anywhere of Four Hundred Thousand ($400,000.00) to One Million Dollars ($1,000,000.00), and would weigh approximately twelve thousand pounds would only be taxed under

said Public Law 68, as passed by the 1975 General Assembly, in the approximate amount of One Thousand Four Hundred Dollars ($1,400.00).

12. That if said Four Winds, Inc., must pay said excise tax in the amount of Eighteen Thousand Six Hundred Dollars ($18,600.00), it would create an undue burden on said Club, in that they are financially unable to pay the same.

13. That said tax in the amount of Eighteen Thousand Six Hundred Dollars ($18,600.00) was due from Four Winds, Inc., on or before February 29, 1976, for registration and operation of the plane under Indiana State Law during 1976.

14. That as of February 29, 1976, Four Winds, Inc., had not owned or had possession of said aircraft, above described, as the Convair 880, for a period even near one hundred and eighty days (180).

15. Furthermore, neither had Four Winds, Inc., had possession of said air-

craft for a period of one hundred and eighty (180) days during the year 1975.

16. That Four Winds, Inc., pays landing fees to Weir Cook Airport each and every time that it lands on said strips, based on the landing weight of the aircraft.

17. That based on the taxation to the aircraft in the approximate amount of Eighteen Thousand Six Hundred ($18,600.00) Dollars per year, and further based on the cost of said Convair 880 in the amount of Two Hundred and Twenty-five Thousand Dollars ($225,000.00), in approximately twelve (12) years, Four Winds, Inc., would have paid in taxes to the Indiana Aeronautics Commission, the same amount of money as they paid for their plane at the intital purchase.

18. That Mr. Henry A. Kezimier is at this time Executive Director of the Indiana Aeronautics Commission.

19. That it is part of the Executive Director of the Aeronautics Commission's duties to propose legislation to the In-

diana General Assembly.

20. That Mr. Henry A. Kezimier, Executive Director of the Indiana Aeronautics Commission, had served as General Chairman of the Aviation Association of Indiana, and as a member of the founding Board of Directors of the Aviation Association of Indiana, and had worked with those groups for about seven (7) years to draft this proposed legislation and get it passed in the form of Public Law No. 68.

21. That Mr. Kezimier assisted in the specific drafting and preparation of this particular legislation, as enacted in Public Law No. 68.

22. That during the course of the Legislative Hearings considering the potential passage of this now enacted Public Law 68, there were representatives of the major commercial transport companies, such as TWA, Eastern Airlines and others.

23. Further, that these groups, such as TWA, Eastern and other major commercial transports, lobby each year

at the Indiana General Assembly to insure that they do not get stuck with any additional taxes from the State of Indiana on their aircraft.

24. That there is an exclusionary section in Public Law 68 that applies to the aircraft owned or operated by an air carrier certified under Federal Air Regulation Part 121. And, further certified under Regulation Part 135. And, further that these are scheduled airlines such as Eastern, TWA, etc.

25. That each of these scheduled airlines, such as Allegheny, North Central, Skystream, etc., who use the Indiana Airport facilities at Weir Cook Airport more than Four Winds, Inc., but yet are exempted from this taxation under Public Law 68.

26. That it is Mr. Kezimier's decision that the best way to tax airplanes is by weight and age, without any consideration as to cost value, or otherwise.

27. That when this Public Law 68 was enacted by the 1975 General Assembly,

as promoted by Kezimier, Four Winds, Inc., and other clubs were not taken into consideration as to facts that they had large aircraft of a very heavy weight, but a very small value comparatively.

28. Thus this tax under Public Law 68, as it applies to Four Winds, Inc., is an unfair tax.

29. In the promotion and passage of Public Law 68, there was no consideration given to the use factor, such as the number of flights and take-offs. Furthermore, it was even thought that this at that time was irrelevant.

30. That by passage of Public Law 68 and the enforcement thereon by the Indiana Aeronautics Commission, this effectively punishes Four Winds, Inc., in the further regard that they also pay a landing fee as do other exempt transport planes.

31. That Four Winds, Inc., is punished by a penalty tax or an excise tax for basing its plane in the State of Indiana, at least 180 days a year.

32. That the Airlines of Eastern, Delta, and Allegheny would have between fifteen to twenty (15-20) airplanes in Indianapolis Weir Cook Airport on a given business day. Furthermore, that said airline companies have planes based at Indianapolis Weir Cook Airport, more often than does Four Winds, Inc., even though they do not pay any excise fees.

33. That this excise tax under Public Law 68 is not fair to Four Winds, Inc., and that there is probably an extenuating circumstance where this tax is applied to Four Winds, should be different than applied under the formula.

34. That this excise tax as applied to Four Winds, Inc., is in fact a penalty tax.

35. That during the legislative sessions and committee hearings, none of the private flying clubs, including Four Winds, Inc., was invited to attend the hearings and testify on behalf of or against the proposed legislation, which became enacted as Public Law 68. However, the other major transport airlines were

present and invited.

36. That in the event the excise tax is not paid on aircraft based in Indiana, then there is an obligation to pay the personal property tax.

37. That the property tax, under Public Law 68, is an alternative tax in the event the excise tax is not paid.

38. That Mr. Kezimier went back to the 1976 General Assembly to seek rectification of Public Law 68 in terms of amending said Law to include the alternative tax clearly as that was the intention from the promoters and authors of said Public Law 68. However, due to the length of the session in 1976, this was unable to be completed.

39. That the imposition of the excise tax under Public Law 68, as applied to Four Winds, Inc., is confiscatory in nature, and imposes a hardship on Four Winds.

40. That Public Law No. 68 as enacted by the 1975 General Assembly does not give Four Winds, Inc., the option of paying either the excise tax or the

property tax, whichever is lesser, as it does other aircraft.

41. That Four Winds, Inc., travels in interstate commerce, by virtue of purchasing gasoline, food, beverages, and labor throughout the United States and foreign countries.

Respectfully submitted,

/s/ James P. Quinn
Attorney for Plaintiff,
Four Winds, Inc.

James P. Quinn
One Indiana Square, Suite 2235
Indianapolis, Indiana 46204
639-2683

STATE OF INDIANA) IN THE MARION COUNTY
) SS:
COUNTY OF MARION) SUPERIOR COURT 5

CAUSE NO. S576-233

FOUR WINDS, INC. and AMBASSADAIR, INC.,

Plaintiffs,

vs.

INDIANA AERONAUTICS COMMISSION,

Defendant.

CONCLUSIONS OF LAW

1. That Public No. 68 as enacted by the 1975 General Assembly is unconstitutional as in violation of the Fourteenth Amendment of the Constitution of the United States as applied to this Plaintiff in respect to a taking of its property in a confiscatory manner without due process of law, and further that it is the direct denial of the Plaintiff's right to equal protection of the laws of the United States and

of the State of Indiana.

2. That said Public No. 68 as enacted by the 1975 General Assembly effectively creates an invidious discrimination as applied to this Plaintiff, and therefore is unconstitutional under the Constitution of the State of Indiana, and further under the Constitution of the united States of America.

3. That said tax is confiscatory as applied to this Plaintiff, that said tax is a penalty tax as applied to this Plaintiff, that said tax is unfair as applied to this Plaintiff, and that said tax is inherently discriminatory as applied to this Plaintiff.

THEREFORE, said tax is unconstitutional as interpreted through the Constitututution of the United States and of the Constitution of the State of Indiana, as applied to this Plaintiff.

Respectfully submitted,

/s/ James P. Quinn
Attorney for Plaintiff,

Four Winds, Inc.

James P. Quinn
One Indiana Square
Suite 2235
Indianapolis, Indiana 46204
639-2683

STATE OF INDIANA) IN THE MARION COUNTY
)SS:
COUNTY OF MARION) SUPERIOR COURT 5

CAUSE NO. S576-233

FOUR WINDS, INC., and AMBASSADAIR, INC.,

Plaintiffs,

vs.

INDIANA AERONAUTICS COMMISSION,

Defendant.

ORDER

Comes now the plaintiffs, Ambassadair, Inc., and Four Winds, Inc., by counsel, and the Court having heard evidence under oath on the plaintiff's complaint, the Court having consolidated said hearing, without objection, under Trial Rule 65 (A)(2), the Court now approves and issues the following findings of fact:

(H.I.)

And further, pursuant to said findings of fact the Court now approves

and issues the following conclusions of law:

(H.I.)

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Public Law 68 enacted by the Indiana General Assembly 1975, IC1971 6-6-7-13 as applied to these plaintiffs is hereby declared unconstitutional and declared null and void under the Constitution of the State of Indiana; and further that the preliminary injunction previously herein is now made permanent, and further that the Indiana Aeronautics Commission is hereby enjoined from enforcing the collection of the subject tax in accordance with Public Law 68 as to these plaintiffs, and further that the Indiana Aeronautics Commission is hereby enjoined from refusing to issue proper registration and license as to these plaintiffs, if said plaintiffs otherwise qualify.

SO ORDERED
April 9, 1976

/s/ Michael T. Dugan, II, Judge, Marion Superior Court, No. 5

STATE OF INDIANA) IN THE MARION COUNTY
)SS:
COUNTY OF MARION) SUPERIOR COURT 5

CAUSE NO. S576-223

FOUR WINDS, INC. and AMBASSADAIR, INC.,

Plaintiffs,

vs.

INDIANA AERONAUTICS COMMISSION,

Defendant.

AMENDED FINDINGS OF FACT

1. Four Winds, Inc., is an Indiana Not-for-Profit Corporation, organized under the Indiana Not-for-Profit Corporation Law, in approximately July of 1975.

2. Further, that Four Winds, Inc., is an air travel club that is based in the Indianapolis area, and operates specifically as a club only to its members.

3. That Four Winds, Inc., operates from Combs Gates hangar at Weir Cook

Airport, Indianapolis, Indiana.

4. That even though the Convair 880 operated by Four Winds, Inc., is based at Combs Gates hangar, the aircraft is still out of the State of Indiana, approximately four (4) days of each week of the year.

5. That Four Winds, Inc., operates under a FAA Certificate under Part 123. And, further that all of its operations, as far as crews, aircraft, maintenance, etc., are controlled by the FAA.

6. That the Convair 880, owned by Four Winds, Inc., was built in 1962.

7. That the value of the 1962 model Convair 880 is approximately Two Hundred and Twenty-five Thousand Dollars ($225,000.00), which in fact was the price paid on the lease with option to purchase agreement.

8. That under the provisions of Public Law 68 that were passed by the 1975 General Assembly, Four Winds, Inc., would be required to pay approximately Eighteen Thousand Six Hundred Dollars ($18,600.00) in excise taxes to the

Indiana Aeronautics Commission for certification by the State and registration by the State, of said plane for operation during 1976 calendar year.

9. Further, that this tax is based on a maximum landing weight of one hundred and fifty-five thousand pounds (155,00 lbs.) at a twelve cents ($.12) per pound charge under the excise tax provisions of the above-described law during the year of 1976.

10. That under a normal personal property tax assessment that has been previously existing in the State of Indiana, for purposes of taxation, the tax on this Convair 880, 1962 Model, would have been for 1976 due and payable in 1977, approximately Seven Thousand Two Hundred Dollars ($7,200.00).

11. That comparatively, a Lear Jet that would have value of, from anywhere to Four Hundred Thousand Dollars ($400,000.00) to One Million Dollars ($1,000,000.00), and would weight approximately twelve thousand pounds would only be taxed under said Public

Law 68, as passed by the 1975 General Assembly, in the approximate amount of One Thousand Four Hundred Dollars ($1,400).

12. That if said Four Winds, Inc., must pay said excise tax in the amount of Eighteen Thousand Six Hundred Dollars ($18,600.00), it would create an undue burden on said Club, in that they are financially unable to pay the same.

13. That said tax in the amount of Eighteen Thousand Six Hundred Dollars ($18,600.00) was due from Four Winds, Inc., on or before February 29, 1976, for registration and operation of the plane under Indiana State Law during 1976.

14. That as of February 29, 1976, Four Winds, Inc., had not owned or had possession of said aircraft, above described, as the Convair 880, for a period even near one hundred and eighty days (180).

15. Furthermore, neither had Four Winds, Inc., had possession of said aircraft for a period of one hundred and

eighty (180) days during the year 1975.

16. That Four Winds, Inc., pays landing fees to Weir Cook Airport each and every time that it lands on said strips, based on the landing weight of the aircraft.

17. That Mr. Henry A. Kezimier is at this time Executive Director of the Indiana Aeronautics Commission.

18. That it is part of the Executive Director of the Aeronautics Commission's duties to propose legislation to the Indiana General Assembly.

19. That Mr. Henry A. Kezimier, Executive Director of the Indiana Aeronautics Commission, had served as General Chairman of the Aviation Association of Indiana, and as a member of the founding Board of Directors of the Aviation Association of Indiana, and had worked with those groups for about seven (7) years to draft this proposed legislation and get it passed in the form of Public Law No. 68.

20. That Mr. Kezimier assisted in the specific drafting and preparation of this

particular legislation, as enacted in Public Law No. 68.

21. That during the course of the Legislative Hearings considering the potential passage of this now enacted Public Law 68, there were representatives of the major commercial transport companies, such as TWA, Eastern Airlines and others.

22. That there is an exclusionary section in Public Law 68 that applies to the aircraft owned or operated by an air carrier certified under Federal Air Regulation Part 121. And, further certified under Regulation Part 135. And, further that these are scheduled airlines such as Eastern, TWA, etc.

23. That each of these scheduled airlines, such as Allegheny, North Central, etc., who use the Indiana Airport facilities at Weir Cook Airport more than Four Winds, Inc., but yet are exempted from this taxation under Public Law 68.

24. That it is Mr. Kezimier's decision that the best way to tax airplanes is

by weight and age, without any consideration as to cost value, or otherwise.

25. That when this Public Law 68 was enacted by the 1975 General Assembly, as promoted by Kezimier, Four Winds, Inc., and other clubs were not taken into consideration as to facts that they had large aircraft of very heavy weight, but a very small value comparatively.

26. Thus this tax under Public Law 68, as it applies to Four Winds, Inc., is an unfair tax.

27. In the promotion and passage of Public Law 68, there was no consideration given to the use factor, such as the number of flights and take-offs. Furthermore, it was even thought that this at that time was irrelevant.

28. That by passage of Public Law 68 and the enforcement thereon by the Indiana Aeronautics Commission, this effectively punishes Four Winds, Inc., in the further regard that they also pay a landing fee as do other exempt transport planes.

29. That Four Winds, Inc., is punish-

ed by a penalty tax or an excise tax for basing its plane in the State of Indiana, at least 180 days a year.

30. That the Airlines of Eastern, Delta, and Allegheny would have between [sic] to twenty (15-20) airplanes in Indianapolis Weir Cook Airport on a given business day. Furthermore, that said airline companies have planes based at Indianapolis Weir Cook Airport, more often than does Four Winds, Inc., even though they do not pay any excise fee.

31. That this excise tax under Public Law 68 is not fair to Four Winds, Inc., and that there is probably an extenuating circumstance where this tax is applied to Four Winds, should be different than applied under the formula.

32. That this excise tax as applied to Four Winds, Inc., is in fact a penalty tax.

33. That during the legislative sessions and committee hearings, none of the private flying clubs, including Four Winds, Inc., was invited to attend the hearings and testify on behalf of or

against the proposed legislation, which became enacted as Public Law No. 68. However, the other major transport airlines were present and invited.

34. That in the event the excise tax is not paid on aircraft based in Indiana, then there is an obligation to pay the personal property tax.

35. That the property tax, under Public Law 68, is an alternative tax in the event the excise tax is not paid.

36. That Mr. Kezimier went back to the 1976 General Assembly to seek rectification of Public Law 68 in terms of amending said Law to include the alternative tax clearly as that was the intention from the promoters and authors of said Public Law 68. However, due to the length of the session in 1976, this was unable to be completed.

37. That the imposition of the excise tax under Public Law 68, as applied to Four Winds, Inc., is confiscatory in nature, and imposes a hardship on Four Winds.

38. That Four Winds, Inc., travels

in interstate commerce, by virtue of purchasing gasoline, food, beverages, and labor throughout the United States and foreign countries.

/s/ Michael T. Dugan, II, Judge, Marion County Superior Court No. 5

STATE OF INDIANA) IN THE MARION COUNTY
) SS:
COUNTY OF MARION) SUPERIOR COURT 5

CAUSE NO. S576-233

FOUR WINDS, INC., and AMBASSADAIR, INC.,

Plaintiff,

vs.

INDIANA AERONAUTICS COMMISSION,

Defendant.

AMENDED CONCLUSIONS OF LAW

1. That Public No. 68 as enacted by the 1975 General Assembly is unconstitutional as in violation of the Fourteenth Amendment of the Constitution of the United States as applied to Plaintiff, Four Winds, Inc., in respect to a taking of its property in a confiscatory manner without due process of law, and further that it is the direct denial of said Plaintiff's right to equal protection of the laws of the

United States and of the State of Indiana.

2. That said Public No. 68 as enacted by the 1975 General Assembly effectively creates an invidious discrimination as applied to Plaintiff, Four Winds, Inc., and therefore is unconstitutional under the Constitution of the State of Indiana, and further under the Constitution of the United States of America.

3. That said tax is confiscatory as applied to Plaintiff, Four Winds, Inc., that said tax is a penalty tax as applied to said Plaintiff, that said tax is unfair as applied to said Plaintiff, and that said tax is inherently discriminatory as applied to said Plaintiff.

THEREFORE, said tax is unconstitutional as interpreted through the Constitution of the United States and of the Constitution of the State of Indiana, as applied to Plaintiff, Four Winds, Inc.

/s/ Michael T. Dugan, II, Judge, Marion County Superior Court Room No. 5